IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 170 of 2004

with

CIVIL APPLICATION No 8882 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHYABHAI HARIBHAI KAPADIA

Versus

JAYANTIBHAI KANJIBHAI KUMBHAR

Appearance:

1. Appeal from Order No. 170 of 2004

MR AR THACKER for Appellant No.

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/02/2005

ORAL JUDGEMENT

1. The appellants have preferred this appeal from order being aggrieved by the order dated 29/09/2003 passed by the learned Jt. Civil Judge (S.D.), Gondal in Special Civil Suit No.58 of 2003 below application exh.5,

whereby the said application was rejected.

2. Mr.A R Thacker learned advocate for the appellant has contended that the trial Court has committed an error by considering exh.5 application without their being any report of the Court Commissioner below exh.20 on record.

3. Having heard Mr.A R Thacker learned advocate for the appellant, it appears that the aforesaid contention was not raised before the trial Court. However, after the completion of the Court Commissioner's report exh.20, it will be open for the appellants to apply afresh before the trial Court.

4. If application as aforesaid is preferred by the appellants, the trial Court is directed to consider the same, without being influenced by its earlier order passed below application exh.5, which is the subject matter in this appeal. The trial Court shall consider the matter afresh, after examining the report of the Court Commissioner that may be placed on record, and, if ultimately, the appellants - original plaintiffs establish their case successfully, the trial Court shall consider the same in accordance with law.

5. With the above directions, this appeal from order stands disposed of.

ORDER IN CIVIL APPLICATION

In view of the order passed in the appeal from order, no orders are necessary in this civil application. It stands disposed of accordingly.

(K. S. Jhaveri, J.)

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